

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JUSTIN RIVERA,

Defendant.

19-CR-131-02 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

Sentencing in this case is scheduled for Tuesday, October 11, 2022, at 11 am. Provided that no material disputes of fact are unresolved, the Court will be prepared to conduct the full sentencing hearing that day.

However, based on the Court's review of the parties' sentencing submissions, it appears to the Court that the facts recited in paragraphs 99 through 115 of the presentence report ("PSR"), and the conclusion that the Government argues and the PSR finds from these facts that defendant Rivera attempted to obstruct justice and tamper with a trial witness following his conviction at trial, is disputed by the defense. *See* Defense Sentencing Memorandum, at 22. The Court notifies counsel that it regards the issue of whether the defendant attempted to obstruct justice and tamper with a witness as material to its sentencing determination. The Court further notifies counsel that the fact reported at paragraph 27 of the PSR – that the defendant bribed a Bureau of Prisons official or staff member on or about October 23, 2020 – may be material to its sentencing determination, but further elaboration on this event is necessary before such a determination can be made.

The Court accordingly directs counsel to confer forthwith to determine whether such facts are in dispute, and if so, by what evidence these facts would be litigated at a *Fatico* hearing. If so, at the October 11 sentencing hearing, the Court will accomplish as much of the sentencing process as can be accomplished in the face of disputed material facts, and will then take up with counsel the prompt scheduling and content of a *Fatico* hearing.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: October 6, 2022
New York, New York